

## 46 Am. Jur. 2d Judges § 35

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### Judges

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### V. Powers and Duties

### B. Successor Judges

## § 35. Retrial of case by successor judge

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Judges](#)  32

Whether to retry a case tried by a predecessor judge whose decision was not formalized by a journal entry is within the discretion of the successor judge.<sup>1</sup> A successor judge has not only the authority but also in some jurisdictions the duty to retry a case that the predecessor heard but did not decide; in other jurisdictions, the successor judge may decide the case on the record of the evidence after hearing the argument and without taking further testimony.<sup>2</sup>

A party is entitled to a determination of the issues by the judge who heard the evidence, and, where a case is tried to a judge who resigns before determining the issues, a successor judge cannot decide the issues or enter findings without a trial de novo.<sup>3</sup> Thus, due process required a successor judge, assigned after the original judge retired, to hold a new evidentiary hearing on remand in a workers' compensation action to consider conflicting evidence as to whether a presumption of correctness afforded to the vocational rehabilitation specialist's opinion of claimant's disability had been rebutted, and whether the claimant was totally and permanently disabled; the witnesses' credibility was at issue, and the parties did not consent to the procedure.<sup>4</sup>

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### Footnotes

- 1 [Golf City, Inc. v. Wilson Sporting Goods, Co., Inc.](#), 555 F.2d 426, 23 Fed. R. Serv. 2d 1176 (5th Cir. 1977).
- 2 [§ 31.](#)
- 3 [In re S.B.](#), 5 N.E.3d 1152 (Ind. 2014).
- 4 [Liljestrand v. Dell Enterprises, Inc.](#), 287 Neb. 242, 842 N.W.2d 575 (2014).

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